

JUDGE CROTTY

12 CIV 0795

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL,

Plaintiff,

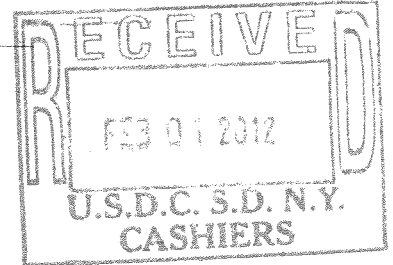
v.

UNITED STATES DEPARTMENT
OF AGRICULTURE,

Defendant.

Civil Action No. _____

ECF Case



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Natural Resources Defense Council (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant United States Department of Agriculture (USDA), for failing to disclose responsive records concerning the agency's proposed deregulation of herbicide-resistant crops.

2. This court has jurisdiction over this action and venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because Plaintiff NRDC has its principal place of business in this judicial district.

3. NRDC is a national, not-for-profit environmental and public health membership organization with more than 350,000 members nationwide. NRDC engages in research, advocacy, and litigation related to the lawful regulation of herbicides.

4. Defendant USDA is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks in this action.

5. Herbicide-resistant crops are regulated in part under the Plant Protection Act, 7 U.S.C. § 7701. Under that statute, genetically modified plant varieties, including crops

engineered to be resistant to herbicides, may not be sold commercially unless they are “deregulated” by the USDA. That agency is currently considering petitions to deregulate several herbicide-resistant varieties of corn and soybeans, which, if granted, would significantly increase usage of the herbicides to which those genetically modified crops are resistant.

6. NRDC submitted a FOIA request to USDA on October 17, 2011 by fax and certified mail. NRDC’s request seeks records concerning the proposed deregulation of three herbicide-resistant crops. NRDC also requested a fee waiver on the grounds that disclosure of the requested information is in the public interest.

7. Pursuant to the deadline established in 5 U.S.C. § 552(a)(6)(A)(i), USDA’s response to NRDC’s FOIA request was due on November 15, 2011. To date, USDA has failed to provide NRDC with a response to its request. USDA also failed to respond to or make any determination on the fee waiver request.

8. Several weeks after USDA’s deadline to respond, the agency acknowledged receipt of NRDC’s FOIA request by letter dated December 7, 2011. In that letter, USDA purported to grant itself an extension until January 27, 2012 to review records responsive to NRDC’s FOIA request. This purported extension violates USDA’s regulations. USDA did not state any deadline by which it would produce all responsive records as required by law.

9. NRDC is entitled under FOIA to a waiver of USDA’s search and production fees with respect to this request. NRDC has a demonstrated ability and intent to analyze and convey the information in the requested records to a broad public audience. Disclosure of the requested records will contribute significantly to public understanding of government activities and operations. NRDC is a non-profit organization with no commercial interest in the requested records.

10. NRDC seeks a declaration that USDA has violated FOIA by refusing to disclose responsive records and an injunction ordering USDA to provide those records. NRDC also seeks a declaration that, pursuant to FOIA, NRDC is entitled to a fee waiver from USDA in connection with its FOIA request.

11. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by USDA's failure to provide responsive records and failure to grant a fee waiver for this FOIA request. The requested relief will redress these injuries.

CLAIM FOR RELIEF

12. NRDC has a statutory right under FOIA to the records that it seeks, at no cost, and there is no legal basis for USDA's failure to disclose all responsive records.

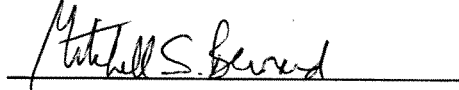
REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests an Order:

- (1) Declaring that the defendant's failure to disclose the records requested by the plaintiff in a timely fashion is unlawful;
- (2) Declaring that plaintiff is entitled to a waiver of search and production fees with respect to its request;
- (3) Directing the defendant to disclose the requested records to the plaintiff promptly and at no cost;
- (4) Awarding the plaintiff its costs and attorneys' fees; and
- (5) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 1, 2012

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mitchell S. Bernard", is written over a horizontal line.

Mitchell S. Bernard (MB 5823)
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, NY 10011
(212) 727-2700
(212) 727-1773 (fax)
mbernard@nrdc.org

Counsel for Plaintiff